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Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

REECE FREEMAN; BRITTANY FREEMAN,

Plaintiff,

v.

C. R. BARD, INC.; BARD PERIPHERAL
VASCULAR, INCORPORATED,

Defendants.

CASE NO. 2:19-cv-01572-RFB-BNW

**STIPULATION AND [PROPOSED]
ORDER TO STAY CASE**

(FIRST REQUEST)

Plaintiffs Reece and Brittany Freeman (“Plaintiffs”) and Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (“Defendants” and collectively with Plaintiffs, the “Parties”), pursuant to Fed. R. Civ. P. 26(c) and (d) and LR IA 6-2, respectfully request that this Court temporarily stay

1 discovery and all pretrial deadlines until **June 30, 2021** while the Parties pursue settlement. In
2 support thereof, the Parties state as follows:

3 1. This case was part of the Multi-District Litigation proceeding *In re: Bard IVC Filters*
4 *Product Liability Litigation*, pending before Senior Judge David Campbell of the District of
5 Arizona.

6 2. Plaintiff Reece Freeman alleges experiencing complications following the
7 implantation of a Bard Inferior Vena Cava (“IVC”) filter, a prescription medical device. He has
8 asserted three strict products liability counts (manufacturing defect, information defect (failure to
9 warn) and design defect), six negligence counts (design, manufacture, failure to recall/retrofit, failure
10 to warn, negligent misrepresentation and negligence per se), two breach of warranty counts (express
11 and implied), two counts sounding in fraud (fraudulent misrepresentation and fraudulent
12 concealment), an unfair and deceptive trade practices count, a claim for loss of consortium, and a
13 claim for punitive damages.

14 3. Defendants deny the Plaintiffs’ allegations.

15 4. After four years, the completion of general issue discovery, and three bellwether trials,
16 Judge Campbell ordered that certain cases, which have not settled or are not close to settling, be
17 transferred or remanded to the appropriate jurisdictions around the country for case-specific
18 discovery and trial. As a part of that process, he established a “track” system, wherein certain cases
19 were placed on tracks either to finalize settlement paperwork, continue settlement negotiations, or be
20 remanded or transferred.

21 5. This case was transferred to this Court on May 18, 2017 because at the time it was not
22 close to settling. Recently, the Parties have begun settlement discussions and are scheduling a global
23 mediation as to all of Plaintiffs’ counsel’s IVC filter cases in June 2021. The Parties believe that a
24 stay is necessary to conserve their resources and attention so that they may attempt to resolve this
25 case and those of the other plaintiffs represented by Plaintiffs’ counsel with cases pending before this
26 Court.

27 6. Accordingly, the Parties request that this Court issue an order staying discovery and
28 pretrial deadlines until **June 30, 2021** to allow the Parties time to continue their settlement

1 discussions and attend mediation in June if still necessary. This will further facilitate settlement
 2 discussions, prevent unnecessary expenditures by the Parties, and conserve judicial resources as well
 3 as place this case on a similar “track” as the MDL cases Judge Campbell determined should continue
 4 settlement dialogue.

5 7. A district court has broad discretion over pretrial discovery rulings. *Crawford-El v.*
 6 *Britton*, 523 U.S. 574, 598 (1998); *accord, Republic of Ecuador v. Hinchee*, 741 F.3d 1185, 1188-89
 7 (11th Cir. 2013); *Thermal Design, Inc. v. Am. Soc’y of Heating, Refrigerating & Air-Conditioning*
 8 *Engineers, Inc.*, 755 F.3d 832, 837 (7th Cir. 2014); *see also, Cook v. Kartridg Pak Co.*, 840 F.2d 602,
 9 604 (8th Cir. 1988) (“A district court must be free to use and control pretrial procedure in furtherance
 10 of the orderly administration of justice.”).

11 8. Under Federal Rules of Civil Procedure 26(c) and 26(d), a court may limit the scope
 12 of discovery or control its sequence. *Britton*, 523 U.S. at 598. Although settlement negotiations do
 13 not automatically excuse a party from its discovery obligations, the parties can seek a stay prior to
 14 the cutoff date. *Sofo v. Pan-American Life Ins. Co.*, 13 F.3d 239, 242 (7th Cir. 1994); *see also,*
 15 *Wichita Falls Office Assocs. V. Banc One Corp.*, 978 F.2d 915, 918 (5th Cir. 1993) (finding that a
 16 “trial judge’s decision to curtail discovery is granted great deference,” and noting that the discovery
 17 had been pushed back a number of times because of pending settlement negotiations).

18 9. Facilitating the efforts of parties to resolve their disputes weighs in favor of granting
 19 a stay. In *Coker v. Dowd*, 2:13-cv-0994-JCM-NJK, 2013 U.S. Dist. LEXIS 201845, at *2-3 (D. Nev.
 20 July 8, 2013), the parties requested a 60-day stay to facilitate ongoing settlement negotiations and
 21 permit them to mediate global settlement. The Court granted the stay, finding the parties would be
 22 prejudiced if required to move forward with discovery at that time and a stay would potentially
 23 prevent an unnecessary complication in the case. *Id.* at *3. Similarly, the Parties in the present case
 24 are engaged in ongoing comprehensive settlement negotiations with Plaintiffs and the other plaintiffs
 25 represented by Plaintiffs’ counsel and plan to mediate these cases in June 2021.

26 10. The Parties agree that the relief sought herein is necessary to handle the case in the
 27 most economical fashion yet allow sufficient time to schedule and complete discovery if necessary,

28 ///

1 consistent with the scheduling obligations of counsel. The relief sought in this stipulation is not
2 being requested for delay, but so that justice may be done.

3 **WHEREFORE**, Plaintiffs and Defendants respectfully request the Court's approval of this
4 stipulation to stay discovery and all pretrial deadlines until **June 30, 2021** to allow the Parties to
5 conduct ongoing settlement negotiations and mediation.

6 **IT IS SO STIPULATED.**

7
8 Respectfully submitted this 22nd day of February 2021.

9 **WETHERALL GROUP, LTD.**

GREENBERG TRAUIG, LLP

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18 ***Counsel for Plaintiffs***

Counsel for Defendants

19
20 **IT IS SO ORDERED.**

21 
22 **RICHARD E. BOULWARE, II**
23 **United States District Court**

24
25 DATED this 1st day of March, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on **February 22, 2021**, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants registered to receive such service.

/s/ Shermielynn Irasga

An employee of GREENBERG TRAURIG, LLP